

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 6917 of 2014 (O&M)

Date of decision: 26.04.2016

Sanjay Gupta

... Petitioner

versus

Sonya Gupta and others

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Kunal Dawar, Advocate for the petitioner.
Mr. S.K. Bawa, Advocate for respondent No.1.
Mr. Ashish Chopra, Advocate for respondent No.2.
Mr. S.K. Mahajan, Advocate for respondent No.3-HUDA.
Mr. Sandeep Suri, Advocate for respondent No.4.

K.Kannan, J. (ORAL)

The suit was filed by the plaintiff to contend that the sale purported to have been executed by the power of attorney was result of fraud and the power of attorney as it has been brought about by deception. On a contest by the defendant and before the trial, the defendant filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the Court fee paid was inadequate, for, the plaintiff was bound to value the relief on the consideration recited in the sale deed and pay ad valorem Court fee. The court upheld the objection and directed payment of Court fee. The aggrieved plaintiff is the petitioner before this Court.

Learned counsel argued that the petitioner was administered drugs and his signatures were taken fraudulently to make it appear as though he had executed power of attorney and the sale

executed by the power of attorney cannot bind them. He is reported to have filed the FIR against the power of attorney for the deceptive practice. The counsel would, therefore, argue that he cannot be treated as a party to the transaction and since he has not sought for the prayer of recovery of possession, there is no need for payment of Court fee on valuation. The counsel would refer me to the decision of this Court in Smt. Santosh Malhan and another Vs. Naina Devi and others, 2014 (1) PLJ 237 to say that if the sale deed is challenged on the ground of fraud or misrepresentation they were not required to pay ad valorem court fee. This decision was purported to be following the decision in Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 AIR (SC) 2807. With respect, I must observe that the decision of the Hon'ble Supreme Court has not been correctly applied in Smt. Santosh Malhan's case (supra) and therefore, I cannot subscribe to the view expressed in the judgment. A mere statement that the document is void cannot make it void. If the transaction is by a power of attorney, the document must be a transaction by the plaintiff himself and therefore it would required to be set aside. This view has been expressed in a judgment in Iqbal Singh Vs. Lakhwinder Kaur and others 2015 (2) PLR 284 and I subscribe to the same view. If the contention is that the power of attorney was also taken by fraud, it would required to be set aside in the same way as the sale would required to be set aside. The fraud committed to a transaction is voidable and does not make it void even if the plaintiff chooses to characterize it as such. If the plaintiff himself is a party to the transaction irrespective of whether possession is sought or not, the valuation has to be made on the market value of the property covered through the transaction and ad valorem court fee has to be paid as per Article 1 Schedule 1 as held in Niranjan Kaur Vs. Nirbigan Kaur, 1982 PLR 127. The Full Bench decision was also relied on subsequently in Manohar Lal Vs. Ram Avtar and others, 1990 (1) RLR

431.

The order already passed is sustained and the civil revision petition is dismissed. The petitioner is directed to pay the ad valorem court fee within four weeks from the date of the receipt of the copy of the order failing which the plaint is directed to be rejected in the manner contemplated under Order 7 Rule 11 (1) (c) CPC.

(K.KANNAN)
JUDGE

26.04.2016

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